M. Iqbal and Company, Hyderabad and Others Vs Someswara Cements Chemicals Limited. Hyderabad

Court: Andhra Pradesh High Court

Date of Decision: Oct. 13, 1998

Acts Referred: Evidence Act, 1872 â€" Section 34

Hon'ble Judges: Vaman Rao, J; P. Ramakrishnam Raju, J

Bench: Division Bench

Advocate: R. Venugopal Reddy for Mr. R. Vijayanandan Reddy, for the Appellant; Nooty Ram Mohan Rao, for the Respondent

Final Decision: Dismissed

Judgement

P. Ramakrishnam Raju, J.
Respondent-Company field O.S.No.667 of 1984 which was re-numbered as O.S.No. 193 of 1985 on the file

of the IV Addl. Chief Judge, City Civil Court, Hyderabad, for recovery of sum of Rs. 10,55,639.70 ps., with subsequent interest being the

balance amount and payable by the defendants as per their accounts towards the value of cement supplied. Defendant No. 1 is a partnership firm

of which the second defendant is the Managing Partner, while defendants 3 and 4 are. partners. First defendant-Firm applied for dealership of the

Plaintiff-Company and the Company appointed the trial defendant as its authorised stockist for Chairman, Mir Allam Mandi in June, 1988 and the

business of supply of cement by the plaintiff-Company to the first defendant-Firm was carried on from June, 1983 to December, 1983. The

Plaintiff-Company also appointed the first defendant -Firm as its distributor for twin cities and Ranga Reddy district as per its letter dated

10.6.1983. The plaintiff-Company used to supply cement to the first defendant-Firm and the first defendant-Finn used to clear the bills form time

to time. The Plaintiff-Company in all dispatched cement the value of Rs.24,57,712/- after giving credit to the payment made by the first defendant-

Firm, the first defendant- Finn has to pay Rs.9,Sl,317/- to the plaintiff-Company. The Plaintiff-Company demanded payment of the sad sum

through numbers of letters and the second defendant also held the discussion with the Commercial Manager and the General Manager of the:

plaintiff-Company. Curiously defendants came up with a story that in the supply of cement there were more some diversions and the cement

supplied was of inferior quality, and hence, they paid compensation to those persons to whom cement supplies were made. Pending finalisation of

the accounts, second defendant has agreed to deliver back 4,000 bags of cement to the plaintiff-Company, but finally returned only four trucks of

cement on 29.3.1984. Second defendant and the representatives of the Plaintiff-Company held a conference wherein certain understanding was

reached, but the second defendant want without signing the minutes. Hence the plaintiff-Company got issued a legal notice, for which a contentious

reply was sent by the defendants. Hence the Suit.

2. In the written statement filed by the first defendant which was adopted by defendants 2 and 3, it is slated that the plaint as signed by

Mr.M.Madhusudhima Rao is not in accordance with law. It is admitted that the first defendant was appointed as a dealer in cement for twin cities

and Ranga Reddy district in terms of the latter dated 6.10.1983. They denied that the plaintiff-Company supplied stock worth Rs. 24,.57,766/-.

They have received only stock worth Rs, 21,19,962/- as per their books of account. The first defendant-Finn also paid to the plaintiff-Company a

sum of Rs. 13,51,560/-. As the plaintiff-Company made supplies of stock directly to Safari Complex Company worth Rs. 15,000/-; Rs.35,280/-

and Rs.6,200/- which are diversion made by the plaintiff-Company for which first defendant-Finn is not liable. First defendant-Firm is also entitled

to Rs.0.75 Ps. commission which as per the letter of appointment dated 6.10.19:33 comes to Rs.40,912.50 Ps. The first defendant-Firm is also

entitled to a rebate of the Rs.2/- which also comes to Rs.71,380/-. It is also stated that the quality of cement supplied by the plaintiff-Company is

poor and therefore, customers complaint about the same, and as such, the first defendant-Finn paid compensation to them aggregating to

Rs.4.59,890/-. All these amounts were due from the plaintiff-Company. Although the plaintiff-Company promised to take back the entire stock, in

reality look only 1.000 bags and on account of this attitude also they suffered. The deposit of Rs.25,000/- made by the defendants has to be

accounted for by the plaintiff-Company. In all the first defendant-Finn is entitled to "claim Rs.9,10,452.50 Ps. from the plaintiff Company,

Accordingly, they laid the counterclaim.

3. Plaintiff-Company filed written statement to the counter-claim, wherein it reiterated that the plaintiff-Company has supplied stock of cement to

the tune of Rs.24,57,712/-. It is stated that the commission of Rs.0.75 Ps. per bag would be payable to the defendants, provided they left 100

metric tonnes per month. The claim for rebate of Rs.2/- per bag cannot be allowed to the defendants, as the stock lifted by them would not

conform to the limits prescribed. It is denied that the quality of cement supplied is inferior. The accounts of Plaintiff-Company are correct and the

defendants cannot make any counter-claim.

4. On the basis of the above pleadings, the trial Court framed the following issues:

(1) Whether the suit is filed by competent person?

(2) Whether the suit in the present form hot maintainable?

(3) Whether the defendants are due to the plaintiff Rs. 10,55,139.70 Ps.?

(4) Whether the defendants are entitled for adjustment of Rs.2,38,270/- from the plaintiff?

(5) Whether the defendants are entitled to Rs.6,72,182.50 Ps. towards set off and counterclaim?

(6) Whether the suit is bad for non-joinder of necessary parties?

(7) Whether the counter claim made by the defendant cannot be decided in this suit?

(8) To what relief?

5. The plaintiff examined three witnesses and marked Exs.A-I to A-9 while defendants examined three witnesses, including the second defendant,

and marked Exs.B-1toB-13.

6. The trial Court decreed the suit for a sum of Rs. 10,55,639/-; likewise, the counter claim (o an extent of Rs. 2,05,362.50 Ps.. Il is this decree

that is challenged in this appeal.

Now the points for consideration are:

(1) Whether the suit is not maintainable? and

(2) Whether the plaintiff is entitled to (he-decree in a sum of Rs.8,50,277.20 Ps. after giving credit to a sum of Rs.2,05,362.05 Ps. allowed as set

off in favour of defendants?

7. Sri R.Manugopal Reddy, learned Senior Advocate appearing on behalf of the appellants submits that the suit as instituted by the plaintiff-

Company, represented by its Secretan is not maintainable, as the Secretary is incompetent to represent the plaintiff-Company.

8. The plaintiff is a Company incorporated under the Companies Act. Under Order 29, Rile I C.P.C. pleadings can besignedand verified on behalf

of the Corporation by the Secraary of by any Director or even by the principal officer of the Corporation. Therefore, E it clear that the Secretary

of the Company is competent to sign and verify the pleadings. That apart, P. W. 1 who is the Secretary of the Plaintiff-Company ;it the time of his

deposition slated that Sri B. Madhusudhima Rao was the Secretary of the Company all the time of filing the suit. Therefore, the objection that the

suit is not maintainable on this ground cannot be sustained.

9. It is next contended by the learned Counsel for the appellants that the suit based on plaintiffs account cannot be decreed, since the plaintiff-

Company failed to prove each and every item of the account, and as the plaintiff-Company has produced its ledger only showing the Khata of the

defendants. It is not disputed that the Plaintiff-Company is a manufacturing unit, the product being cement, with its registered office at Hyderabad

and the Factory is situated in Adilabad district. According to the plaintiff-Company, it appointed the first-defendant-Firm as its distributor for twin

cities and Ranga Reddy district as per its letter dated 10.6.1983 (Ex. A-1). It is the further case of the plaintiff that it dispatched between June

1983 to December 1983, cement worth Rs.24,57,7121- and after giving credit to the payment made by the first defendant-Firm, defendants are

still due to pay a sum of Rs.9,81,317/-. Plaintiff-Company made number of demands including though letters dated 7.1.1984 and 9.1.1984. It also

got a legal notice issued demanding payment of the said amount (Ex. A-7 dated 17.5.1985). Defendants denied that the plaintiff-Company

supplied stock worth Rs.24,57,766/-. They further pleaded that for the stock received by them, they made specific acknowledgement of delivery

cha(sic)ans. Instead they stated that they have received stock worth Rs.21,19,962/ - only as per their books of account. Now, it has to be seen

which version is true.

10. PW-2 who is working an Accountant of the plaintiff-Company stated that Ex. A-1 is prepared by him. Ex. A-1 which is a ledger extract is

prepared by him and his colleague. P.W.I also corroborated the evidence of P.W.2 stating that the plaintiff-Company supplied cement worth

Rs.24,50,000/- approximately to the defendants and the defendants paid a sum of Rs. 14,76,395/- only leaving a balance of Rs.9,81,317/-. Of

course, D.W.I who is the second defendant denied the same, but claimed that the defendants are entitled to Rs.0.75 Ps. commission to each bag

of cement and the said commission comes to Rs.40,912.50 Ps.,"" in addition to a rebate of Rs.2/- on each bags which comes to Rs.71,380/-. It is

also his further case that the cement supplied by the plaintiff-Company is of poor quality, and therefore, customers complained and as such,

defendants paid compensation in a sum of Rs.4.59,890/-. They are also entitled to recover a sum of Rs.20,000/- which mount they deposited with

the plaintiff-Company at the time of agreement. Therefore, defendants are entitled to claim a sum of Rs.9,10.452.50 Ps., from the plaintiff-

Company. They examined defendants 2 and 3 who are customers to show that the quality of cement supplied is poor, and therefore, defendant-

Firm refunded the money to them.

11. As already seen, learned senior Advocate appearing on behalf of the appellants submits that in a suit based on accounts, plaintiff has to

establish each and every item of account and mere production of ledger extract is not enough. He placed reliance on a decision reported in

Chandradhar Goswami and Others Vs. The Gauhati Bank Ltd., The question before the Supreme Court was: whether the certified copy of the

account is enough(sic) prove that a sum of Rs. 10.000/- was advanced to the appellant. Considering the scope of Section 34 of the Evidence Act

(Companies Act?) which says that entries in books of accounts regularly kept in course of business arc relevant whenever they refer to a matter to

which the Court has to enquire, but such statement alone shall not be sufficient to charge any person with liability. Section 34 of the Act is enacted

by way of prudence, since the accounts maintained by the plaintiff to which the oilier sides has no access cannot be conclusive in the absence of the

corroboration. The Supreme Court, therefore observed that in view of Section 34, no person can be charged with liability merely on the basis of

entries in books of accounts even where such books of account are kept in regular course of business, and there should be further evidence to

prove payment of money which may appear in books of account in order that a person may be charged with liability thereunder except where

correctness of books of account re admitted and are not challenged.

12. Normally admission of entries on behalf of a person making them cannot be admitted in evidence as they are not made against the interest of

the person making them. But Section 34 of the Evidence Act carves out an exception to the general principles that the entries in the books of

account which are kept in the regular course of business shall be relevant. Systematically and regularly maintained accounts may ensure accuracy

as they relate to number of transactions and customers. They provide internal evidence for cross-checking. For the fear that businessman would

come to disgrace if false entries are found in accounts, normally incorrect entries would not be made in the hooks of accounts. As the defendant

has no part in the maintenance of account by the plaintiff, the degree of correctness and perfection in maintaining the account by the plaintiff is

always open to challenge by the defendant. Kept regularly does not mean kept correctly. Therefore, Section 34 of the Act although allows the

entries in books of accounts as relevant, but it does not admit them to be final as they by themselves arc not sufficient evidence to charge any

person with liability without something more, Of course, the later part of adducing further proof does not arise when correctness of books of

account is not challenged or disputed. Of course, plaintiff has to establish that the entries in the books of account are regularly maintained, and

therefore, the possibility of entries or loose sheets stitched together cannot answer the requirement of regularly maintained accounts. Production of

day book and the entries therein may sometimes provide corroboration to the entries found in the ledger sheet, as day book is maintained entering

daily transactions. Therefore, entries made in account books maintained in the regular course of business are relevant, but what is the probative

value of those entries is a matter to be decided considering the facts and circumstances of each case.

13. In the case on hand the situation is slightly different: No doubt it is primarily on the plaintiff to establish the quantum of cement supplied to the

first defendant-Firm. P.W.2 in his evidence has stated that Ex. A-1 was written by him and his colleague. These accounts were audited and Ex. A-

1 is the true extract of the ledger account maintained by the plaintiff-Company. He further states that the accounts were prepared on the basis of

delivery challans. D. VV. 1 has not denied in his evidence that cement was not supplied on thee dates which are mentioned in Ex. A-1. In other

words, he is not specific as to which item or items and the date or dates on which cement was not supplied as mentioned in Ex.A-1. He-has not

produced the account books maintained by the first defendant-Firm. Apart from that, defendants claimed rebate at Rs.71,380/- payable at the rate

of Rs.2/- per each bag as a dealer and claimed a sum of Rs.4,89,290/- being the damages paid by them to their customers on account of poor

quality of cement supplied. If the commission comes toRs.40,912.50Ps. calculated at the rate of 75 Ps. per bag, the total number of bags of

cement supplied would come to about 2,700 tonnes. Therefore, having regard to the pleadings, evidence of P. Ws. 1 and 2 and other

circumstances mentioned above, we agree with the finding of the lower Court that the Plaintiff-Company has established that cement was supplied

to the first defendant-Firm a reflected in Ex.A-1. In fact, under Ex. A-2 letter dated 7.11.1984 plaintiff-Company demanded a sum of Rs.9.40,83

2/- being the amount still due from the defendants, receipt of which is not disputed. If the figure found in Ex.A-2 is not true, defendant ought have

disputed immediately. Even under Ex.A-3,letter dated 9.1.1985, plaintiff-Company reiterated the same and defendants have not disputed

immediately. In these letters, statements showing various dispatches made was clearly drawn and balance arrived at after showing the payments.

The lower Court, therefore rightly observed in our view that Exs. A-2 and A-3 would corroborate the correctness of the entries made in Ex.A-1,

Ex.A-4 is another letter dated 27.1.1984 issued by plaintiff-Company to the defendants demanding payment of the said amount stating that

defendants have not paid the amount so far. These documents clearly support and corroborate the ledger copy under Ex. A-1.

14. The next question that arises for consideration is whether the set off pleaded by the defendants by way of damages alleged to have been paid

to their customers due to supply of defective quality cement, commission at the rate of 75 Ps. per bag and rebate at Rs. 2/- per bag etc., is

substantiated.

15. Ex. B-1 is the acceptance by the plaintiff-Company about the offer made by the first defendant dated 8-10-1982 for appointing it as its

authorised stockist. The offer was accepted and the first defendant-Firm was appointed as their stockist. It is also found that a sum of Rs.20,000/-

was sent by was of a demand draft, which amount is received as a deposit. Under Ex.B-2 dated 6.10.1983, plaintiff-Company agreed to allow 75

Ps. perbag as distributor''s commission. There is no mention about the rebate of Rs.2/ - per bag in this letter. But in Ex.B-3 dated 27.10.1983

issued by the plaintiff-Company to the first defendant-Firm, it is mentioned a rebate of Re. 1/- perbag would be allowed for quantities between 25

tonnes to 150 tonnes; Rs.1.50 Rs. for quantities between 150 tonnes to 250 tonnes; and Rs.2-00 for quantities ranging above 250 tonnes per

month. Ã¯Â¿Â½ Defendants claimed a sum of Rs.4,59,890/- by way of damages paid to their customers due to defective quality of cement supplied. In

order to prove this claim, they examined D.Ws.2 and 3. There is no notice issued to the plaintiff-Company at any time about the payment of the

said amount by the defendants to their customers. It is also not their case that they intimated the plaintiff at any time about such liability. Even the

evidence of D.Ws.2 and 3 does not inspire confidence. They did not produce any receipt to show that they have purchased cement at any time

manufactured by the plaintiff-Company and supplied by the defendants. Their claim that they have purchased cement manufactured by the plaintiff-

Company from the first defendant-Finn and that walls and roof developed cracks cannot be believed. They have not produced any account of their

construction or purchase of cement. Therefore, in our view, the lower Court has rightly disbelieved their evidence. Even the defendants have not

produced their account to establish the factum of any such payment. Therefore, the claim on this count is not proved.

16. However, the lower Court has stated that on the basis of enquiries made by one Bhavani Ram, who worked as the Marketing Manager,

Plaintiff-Company has agreed to pay a sum of Rs. 9,000/- under this head.

17. Defendants claimed a sum of Rs, 1.00 lakh as damages in lieu of the fact that they suffered reputation as the cement supplied was of sub-

standard. As we have already observed the evidence of D.Ws. 2 and 3 who were examined to speak about the quality of cement cannot be

believed. Therefore, there is no basis for such a claim, and defendants failed to establish any legal injury before they seek payment of

compensation.

18. Defendants claimed commission at 75 Ps. per bag and rebate at Rs.2/- perbag of cement sold by them. As already seen under Exs.B-2 and

B-3 plaintiff-Company offered to pay commission at the rate of 75 Ps. and rebate at the rate of Rs.2/- perbag. The lower Court considered this

aspect and came to the conclusion that defendants are entitled in a sum of Rs.71,380/- as rebate, since the plaintiff never disputed that defendants

did not lift the required quantity in any month. Defendants are also entitled to commission at the rate of 75 Ps. for which also there is no serious

objection from the plaintiff. Accordingly, as the estimated sales come to 54,550 bags which works out to Rs. 40912.03 Rs. at the rate of 75 Rs.

The lower Court has rightly in our view allowed these two claims. The lower Court also in our view has rightly directed refund of the deposit

amount of Rs.20,000/- with interest as this deposit is meant either to be adjusted at the end of the agreement period or refunded if the defendants

have performed their pan of the agreement without any default. Accordingly, the lower Court has allowed interest on this sum and allowed a sum

of Rs. 22.700/- under this head. We are of the view that the finding of the lower Court is also based on relevant evidence. Accordingly, the lower

Court allowed in all a sum of Rs.2,05,362.50 Ps. towards the counter-claim and after deducting this sum from Rs.10,55,639 a decree was passed

in favour of the plaintiff in a sum of Rs. 8,50,277.20 Ps. with proportionate costs and interest at 12 per cent per annum from the date of the decree

till realisation.

19. For all the above reasons, we do not find any ground to interfere with the judgment and decree passed by the lower Court. The appeal

therefore, fails and is accordingly dismissed. No costs.